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83-1608

No._____

IN THE
SUPREME COURT OF THE UNITED STATES

Rainsford J. Winslow and Winifred W. Winslow,
Petitioners,

v.

KEITH D. WILLIAMS, ALMA JEAN WILLIAMS, DAMON A. McMAHAN, DOROTHY McMAHAN, MARGARET E. HARRINGTON, IRVIN R. KAISER, CAROLYN D. KAISER, WILLIAM C. KROSKOB, HELEN P. KROSKOB, MARK R. WEIMER, ARDITH WEIMER, D.E. STEGER, RICHARD H. WATERS, ROSEMARY J. WATERS, BERNIE HODAPP, ELAINE HODAPP, THOMAS WHEELER, ELEANOR WHEELER, JOHN CONN CLATWORTHY, BARBARA BRETT CLATWORTHY, KEITH L. GAY, DONNA J. GAY, LEE O'NEIL, STEVEN B. ARMSTRONG, DEBORAH ARMSTRONG, DWIGHT MOODY, MILDRED MOODY, JOHN F. FILLINGHAM, CHERYL A. FILLINGHAM, CYNTHIA J. BLAKE, ANDREW W. BLAKE, E. MILTON BINFORD,
Respondents,

MORGAN COUNTY COMMISSIONERS, ROBERT BAUER, JOHN LINDELL, HENRY KAMMERZELL,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Presented by:
Rainsford J. Winslow, Pro Se
Winifred W. Winslow, Pro Se
Morgan Heights, P.O. Box 250
Fort Morgan, Colorado 80701
Phone: (303) 867-6201

QUESTIONS PRESENTED

1. Did the U.S. District Court err in not reviewing the rights of more than 100 Morgan Heights Absent Class Members who were given no notice nor a hearing BEFORE Class certification 11 Jun 80? (Seventy-One Class Members, through testimony, affidavits, letters to the Trial Court, or by signing "Opt-Out-Forms" said they wanted no part of this Class.) U.S. Const., Art. XIV

2. Did the U.S. District Court err by ignoring the pleas of these 71 Absent Class Members, who are now faced with the possibility of paying part of perhaps $350,000 in legal fees? (This has put a cloud on their property, because a new purchaser is also subjected to possible legal fees because of the way the Class is certified. (A few who sold, had to escrow money to pay legal fees. Several took less for their property because of

the legal fee/class cloud.) U.S. Const., Art. XIV

3. Did the U.S. District Court err in not granting the Winslows a new trial before an impartial judge with a jury after reviewing the Winslow REMOVAL PETITION? (The Winslows attempted to disqualify the Morgan County Trial Court Judge eight times; three times in the Trial Court, two times in the Colorado Court of Appeals, and three times in the Colorado Supreme Court--denied eight times.) U.S. Const., Art. XIV

4. Did the U.S. District Court err in ignoring the fact that the Trial Court Judge REWARDED an attorney/adversary who admitted that he illegally hooked on to the Winslows' sewer system by giving him a FREE sewer tap when the other 12 on the system paid a tap fee? Also, the same judge gave a FREE sewer tap to another party later, who is an adversary and competing land developer and is also

a Named-Plaintiff against the Winslows. U.S. Const., Art. V & XIV

5. Did the U.S. District Court err in ignoring the fact that the Court Reporter could not provide a complete transcript of the major part of the Morgan Heights case, and this Court Reporter OMITTED prejudicial remarks by the Trial Court Judge? (On 8 Jun 83 the Colorado Court of Appeals demanded that the Winslows purchase this incomplete transcript at a cost of somewhere between $10,000 and $15,000.) U.S. Const., Art. XIV

6. Did the U.S. District Court err in ignoring the fact that the Winslows questioned the credibility of this Court Reporter because of these transcript problems in the Trial Court, the Colorado Court of Appeals, the Colorado Supreme Court, and the press, which is alleged to have made this Court Reporter biased and prejudiced against the

Winslows? U.S. Const., Art. XIV

7. Did the U.S. District Court err in ignoring the fact that the Winslows attempted to have two Declaratory Judgment Hearings before a jury 10 Jan 83 and 8 Feb 83 on the "Fair Trial/Impartial Judge" issue and the "Transcript/Court Reporter Bias and Prejudice" issue? U.S. Const., Art. VII & XIV

8. Did the U.S. District Court err in not giving the Winslows a jury hearing in the "Judge/Court Reporter" issue which was requested in the REMOVAL PETITION? U.S. Const., Art. VII & XIV

9. Did the U.S. District Court err in not giving Defendants Winslow a Declaratory Judgment Hearing with a jury, which was requested in the REMOVAL PETITION? (Plaintiff objected to REMOVAL PETITION which calls for a hearing as per U.S. Supreme Court. Wilson v. Republic, 257 U.S. 92.) U.S. Const., Art VII & XIV

10. Did the U.S. District Court err in not ruling that CRCP 38 is unconstitutional, because this rule does not require full disclosure with regard to jury option for civil litigants. (The Winslows were given no jury option by their attorney or the judge, which is not required by CRCP 38.) U.S. Const., Art. VII & XIV

11. Did the U.S. District Court err in not ruling that CRCP 97, concerning disqualification of judges in civil cases is unconstitutional? (This gives the Criminal Defendant an advantage the Civil Defendant does not get.) U.S. Const., Art. XIV

12. Did the U.S. District Court err in not recognizing racial equality between the Criminal Defendant and the Civil Defendant? (The Criminal Defendant has benefits weighted in his favor as per CRCrP 21(b) and 23 concerning disqualification of judges and juries.

The Civil Defendant under CRCP 97 and 38, the counterparts, do not get the same benefits. Since there are proportionately more Black/Chicano Criminal Defendants than White Civil Defendants, there is racial discrimination. U.S. Const., Art. VI, VII, & XIV

13. Did the U.S. Court of Appeals err in dismissing the Winslows' appeal on the ORDER OF REMAND by the U.S. District Court back to the Colorado Court of Appeals without review since all of these U.S. Constitutional issues were addressed in the Winslow REMOVAL PETITION? (Since this is a Civil Rights case and was filed under Title 28 USC 1443, such cases are reviewable in the U.S. Court of Appeals as per Title 28 USC 1447(d), but was not reviewed.) U.S. Const., Art. V, VI, VII, & XIV

Attorney General Notice

The Colorado Attorney General was given notice as to the possible unconstitutionality of two Colorado Rules of Civil Procedure, namely CRCP 38 and CRCP 97. This was done as per Colorado Appellate Rule 44, but the Colorado Attorney General has not responded. As per Title 28 USC 2403(b), the Colorado Attornew General will be served three copies of this document.

* * *

THE YELLOW BROCHURE

The Morgan Heights YELLOW BROCHURE is a piece of sales literature tucked in back of this PETITION. It is the cause of this entire legal quagmire started 21 Jun 79, nearly five years ago and the only basis for a $250,000 Judgment against the Winslows. It was not part of any Morgan Heights deed or contract. The Trial Court Judge had this to say about

it in the Judgment of 5 Oct 82:

> 46. Proceeding now to the contractual claims based upon the yellow brochure and/or promissory estoppel, the court finds that nothing in the yellow brochure or its manner of distribution created any express intergrated contract with any class member as it simply was not ever incorporated by reference or otherwise into any contract of purchase between any class members and Defendants Winslow. Any contractural claim based upon the yellow brochure other than the restrictive covenants therein must therefore proceed upon the theory of promissory estoppel, if at all, because of the Colorado Statute of Frauds, C.R.S. 38-10-108.

For the convenience of this Court, here is the complete Colorado Statute:

> C.R.S. 38-10-108. Contract For Interest In Land Must Be Written. Every contract for the leasing for a longer period than one year, or for the sale of any lands or interest in lands,is void unless the contract or memorandum thereof expressing the consideration is in writing and subscribed by the party by whom the lease or sale is to be made.

Thus, even the Trial Court Judge recognized that THE YELLOW BROCHURE was sales literature, yet using his "estoppel theory," put a $250,000

Judgment against the Winslows. No case law was cited to back up this theory.

Attorney Raymond C. Johnson, representing the Winslows, told the judge something like this: (In Open Court 10 Jan 83)

> "Your Honor, you are making up new law. You have no basis for this judgment other than THE YELLOW BROCHURE. There is no estoppel case that comes close to what you have done in this Winslow case where a piece of sales literature is binding unless incorporated into a deed or contract, and you agreed."

The Trial Court Judge said: "Well, that's the way it is in this Court." (The gist.)

The merits of this case are not at issue in this PETITION, and this brief section of this PETITION is incorporated simply to show how unjust the Trial Court Judge was. What is presented in this PETITION are severe violations of U.S. Constitutional Rights.

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PETITION FOR WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS
TENTH CIRCUIT

Petitioners Rainsford J. Winslow and Winifred W. Winslow respectively pray that a Writ of Certiorari be issued to review the ORDER of the U.S. District Court, Division of Colorado dated 27 Jun 83. Also, the ORDER of the United States Court of Appeals, Tenth Circuit, which dismissed the appeal 30 Nov 83. THE PETITION FOR REHEARING was denied.

OPINIONS/ORDERS BELOW

The Order Of Remand by the U.S. District Court of Colorado was Granted 27 Jun 83. (Appendix A) The Motion To Reconsider Order Of Remand was denied 29 Jul 83. (Appendix B)

The U.S. Court of Appeals Dismissed the Winslow appeal 30 Nov 83. (Appendix C) The Petition For Rehearing by the U.S. Court of Appeals was Denied 5 Jan 84. (Appendix D)

JURISDICTION

This United States Court's jurisdiction is invoked under 28 USC 1254 and possibly 28

USC 2403(b), because there are issues as to the constitutionality of two Colorado Rules of Civil Procedure.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. United States Constitution:

Fifth Amendment (in relevant part):

"No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Seventh Amendment (in relevant part):

"In Suits at common law . . . the right of trial by jury shall be preserved . . ."

Fourteenth Amendment (in relevant part):

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

2. Federal Statutes:

Titles 28 USC 1343, 28 USC 1441, 28 USC 1443, 28 USC 1446, and 28 USC 1447.

3. Colorado Rules Of Civil Procedure:

CRCP 23, CRCP 39, and CRCP 97.

INTRODUCTION

Petitioners Rainsford and Winifred Winslow are ages 63 and 61 respectively. Both are native Americans and believe in the United States. Between 21 Jun 79 and today, the Winslows have been disillusioned with the justice system in their country. This is because of what they feel is bizarre treatment in the Colorado Court system and the United States Court system.

As a boy, Winslow became an Eagle Scout, and during World War II, he served in the U.S. Infantry and was awarded the Purple Heart for wounds in action, the Combat Infantrymans' Badge, and the Bronze Star for Valor. He is a past president of the Fort Morgan

Rotary Club and served in many civic committies over the past 35 years.

Mrs. Winslow is a graduate of the University of Denver, taught in the Denver Public Schools for three years while her husband was serving in the Armed Forces. She is an Elder in the Presbyterian Church. With her husband, she raised three adopted children and all are doing well today. There are six grandchildren. She has also served on many civic committees in Fort Morgan over the past 35 years.

This "last resort" Petition to this U.S. Supreme Court tells a sad story, not only about the Winslows' plight, but also the plight of more than 100 others, most of who wanted no part of this Morgan Heights real estate legal quagmire.

The Winslows and at least 71 others pray that this U.S. Supreme Court will review this case and give judicial relief to the Winslows

and the Absent Class Members. The relief sought is a NEW, FAIR JURY TRIAL BEFORE AN IMPARTIAL JUDGE IN THE UNITED STATES DISTRICT COURT.

STATEMENT OF THE CASE

1. Rainsford J. Winslow and Winifred W. Winslow, husband and wife, started Morgan Heights, a 280 acre subdivision located four miles northwest of Fort Morgan, Colorado 16 Jan 54, 30 years ago. Eighty acres are subdivided, 40 acres nearly subdivided, and 160 acres are undeveloped.

2. Between 1954 and 1971, only seven homes were built in Morgan Heights, including the Winslow home, which was the first one. They live there today; did not "sell and run." Between 1971 and 1979, 44 additional homes were built. On 21 Jun 79, 33 Morgan Heights residents filed a Class Action lawsuit, which claimed the Winslows did not fullfil certain promises pertaining to roads, sewer system

and water system. The Morgan County Commissioners, led by Morgan County Attorney E. Ord Wells, were also adversaries of the Winslows as to the roads. The Winslows deny the allegations, but the merits of this case are not at issue here.

3. Four of the 33 Named-Plaintiffs (Steger/O'Neil/Williams/Fillingham) have development property either adjoining or near Morgan Heights. Adversary County Attorney Wells has a pecuniary interest in development property adjoining Morgan Heights.

4. The Winslow's Attorney, Richard K. Clark, prior to the filing of the lawsuit, said he believed the leaders of the 33 Named-Plaintiffs were making an INVESTMENT IN THE COURT SYSTEM, a concept prevalent in Denver. Unscrupulous land developers/business moguls file meritless lawsuits against "little guys" to gain control of the "little guy's" land and/or

business. Those who make this INVESTMENT IN THE COURT figure to spend thousands in the Court system to break him, and get control of the property/business desired. Thus, the attorney fees/legal costs become an investment in gaining control of the property/business.

5. Attorney Clark theorized that these Lawsuit Leaders were interested in the Winslows' water rights, and if successful, would break the Winslows to get the Morgan Heights property for ten cents on the dollar. This would permit the use of the water rights on the adjoining lands, because the adjoining lands do not have the water rights comparable to the Winslows' water rights.

6. Neither Attorney Clark nor the Trial Court Judge James R. Leh gave the Winslows an explanation of their jury rights in this Morgan Heights case. CRCP 38 does not require full disclosure of these rights to a civil litigant, which Winslows feel is unconstitu-

tional because there is no full jury right disclosure to the civil litigant. The Criminal Defendant is given his rights, but not the Civil Defendant. This is not equal protection under the laws.

No Fair Trial With Impartial Judge

7. On 9 Sep 80, there was a Road Issue Summary Judgment Hearing, which Judge Leh denied, apparently because of his personal experience as a County Attorney and a County Commissioner in another county. (The Morgan County Commissioners and the Morgan County Attorney were adverse parties to the Winslows.) Upon reading the partial transcript of the comments by Judge Leh and the fact that he had the point of view of a County Commissioner and a County Attorney, Attorneys Donald A. Carpenter, a former District Judge, George Reddin, Robert Chapin, and Raymond C. Johnson determined that a Motion to Disqualify Judge

Leh should be filed. Attorney Johnson filed this Motion with appropriate Affidavits 28 Nov 80 as per CRCP 97 (Change of Judge). This was well before Judge Leh heard any portion of the Winslows' side of the case. Judge Leh denied the Motion To Disqualify himself. (See Appendix E, Motion For Disqualification/Supporting Affidavit)

8. Without details, several additional prejudicial actions by Judge Leh and numerous Courtroom comments by him showed his partiality to the Winslows' adversaries. Seven more Motions For Disqualification of Judge Leh were filed, three times in the Trial Court before Judge Leh himself, two times in the Colorado Court of Appeals, and three times in the Colorado Supreme Court--all motions denied. Judge Leh finally disqualified himself on his own Motion 21 Jan 83 AFTER what the Winslows feel were three prejudicial Jug-

ments. (The Morgan Heights case was trifurcated.) Attorney Johnson felt these Judgments were the most prejudicial Judgments he had ever seen in his 34 years of practicing law in Colorado. The merits of these Judgments dated 30 Jan 81, 1 Jul 81, and 5 Oct 82 are not at issue here.

9. Had CRCP 97, which covers the disqualification of judges in civil cases, been written in the same way as CRCrP 21(b), which covers disqualification of judges in criminal cases, Judge Leh would have lost jurisdiction the moment he received the Motion and the Affidavit asking for his disqualification. Everything he had done after 28 Nov 80 would have been null and void. This makes CRCP 97 unconstitutional, because this is not equal protection under the law. There is also racial discrimination here because Black and Chicano Criminal Defendants get benefits the

White Civil Defendant does not get. Proportionately there are many more Black and Chicano Criminal Defendants than there are White Civil Defendants.

Judge Leh Rewards Criminal Act

10. On 13 Oct 80, Adversary Stanley I. Rosener, an Attorney and Morgan Heights resident, who was one of the instigators of the Morgan Heights lawsuit, hooked up to the Winslow owned sewer system without permission and without paying the tap fee that all the 12 other customers paid. This Second Degree Criminal Tampering act as per C.R.S. 18-4-506, is a misdemeanor. Winslow filed a complaint with the Morgan County Sheriff's Department, and it was turned over to District Attorney Doyle T. Johns, Jr., who refused to prosecute. On 2 Nov 80, Judge Leh permitted Attorney Rosener to remain on the system. He required a $1,000 escrow deposit, which was refunded

to Rosener by the Judgment of 5 Oct 82. He did not reprimand Attorney Rosener as he is required to do as per CRCP 241.5; he REWARDED him. This shows partiality to an adversary of the Winslows. It is not equal protection of the laws, and confiscated Winslows' property without compensation, violations of U.S. Const., Art. V and XIV.

More Judicial Discrimination/Partiality

11. On 23 Oct 81, Adversary/Land Developer John Fillingham, who has an adjoining/competing subdivision west of Morgan Heights, went before Judge Leh to ask to go on Winslows' sewer system. Judge Leh let him, required a $1,500 escrow deposit, and then refunded the $1,500 to Fillingham by the Judgment of 5 Oct 82. A free sewer tap to Winslow adversary; another violation of U.S. Const., Art. V and XIV.

12. Of the now 14 Winslow sewer system cus-

tomers, 12 PAID a tap fee; two got FREE tap fees.

Judge Gives Away Winslow Land

13. By his 5 Oct 82 Judgment, Judge Leh gave five acres of the Winslows' land, which had been set aside for recreational purposes for the residents of Morgan Heights, to MORGAN COUNTY. This particular five acres was not an issue by anybody in this case. The Plaintiffs didn't demand the land, and neither did adversary Morgan County. This was just a "gift" by Judge Leh to the residents of Morgan County. Would the Morgan Heights residents want to establish a Metro Recreational District for the benefit of all of Morgan County? Apparently, as a former County Commissioner and County Attorney, Judge Leh wanted to REWARD the Morgan County Commissioners with this free piece of choice Morgan Heights land. U.S. Const., Art. V and XIV

Morgan Heights Class Issue

14. There was a Class Determination Hearing 14 May 80, but no notice to Absent Class Members. Judge Leh didn't require any notice.

15. On 11 Jun 80, Judge Leh determined there was a Morgan Heights Class, and defined it as those persons who owned property on or after 14 May 80. Here is the exact definition as per the 5 Oct 82 Judgment:

> 1. The court's previous rulings as to class certification reaffirmed . . . (and the) class continues to be composed of all those non-defendant land owners of Morgan Heights as of May 14, 1980, together with their successors and assigns, up to and including the date of the final determination of this lawsuit.

15. This means that if a person who owned property on 14 May 80 sold his property and moved away, that person would still be in the Class and the person buying the property would also be in the Class--no escape. There were

approximately ten different efforts to decertify the Class to permit certain members of the Class to opt out, but Judge Leh would not permit anyone to opt out.

16. There are about 105 Absent Class Members and 71 have indicated they wanted to be excluded either by testimony at trial, affidavits filed with the Court, letters filed with the Court, or special forms requesting the opportunity to opt out.

17. What this means to Absent Class Members is that should any one of them wish to sell their home, they will have to give full disclosure to the prospective purchaser that said prospective purchaser will be in the Class and subject to possible legal fees that have been charged by Class Attorney Robert J. Dyer III. He has never told anybody as to what the legal fees are, but they probably are about $350,000.

18. This means Judge Leh, by his Class Determination Order, has put a legal cloud on all

property in Morgan Heights. Several who have sold took less for their property because of this legal cloud. Some have had to post money in escrow to pay possible legal fees in the future to protect purchasers.

19. These Morgan Heights Absent Class Members protested saying they wanted no part of this lawsuit, did not want to be represented by Class Attorney Dyer and did not want to pay any of his legal fees, and wanted to be excluded from the Class. They proclaimed this to the Court,as previously indicated. This list that follows includes the three Winslow children, three Winslow attorneys, two Winslow business partners, and at least seven close friends, all of whom were forced into the lawsuit (against the Winslows) against their wills. One of the above mentioned attorneys represented the Winslows in this lawsuit, but yet he was included in the Class against them. Here are those who have begged the Trial Court,

the Colorado Court of Appeals, the Colorado Supreme Court and the U.S. District Court via the Winslow REMOVAL PETITION to exclude them from the Class: (Listed in no particular order.)

Forrest Atwood	Margaret Atwood
Larry Benton	Teresa Benton
Roger Childers	Anita Childers
Robert Cooper, Jr.	Paula Cooper
L.L. Canfield	Hazel Canfield
Lawrence Floyd	Kathleen Floyd
Jay Garthwaite	Carolyn Garthwaite
Stanley Grimes	Teresa Grimes
Deborah Winslow Hand	Harriet Paynter
Arthur Holmes	Roberta Holmes
J.V. Ostermiller	Margaret Ostermiller
James Bachar	Margaret Finlayson
Alan Campbell	Nancy Campbell
Robert Cooper, Sr.	Nancy Cooper
David Cornwell	Anita Cornwell
LaVar Floyd	Betty Floyd
Dwaine Gibson	Robert Haffke
Joe Heagney	Raymond C. Johnson
Richard B. Paynter	Irmalee Pennington
Kay Reed	Miriam Settle
Alex Schutzenhofer	Betty Schutzenhofer
John Stark	Doris Stark
Marshall Ulrich	Dannette Ulrich
Douglas S. Winslow	Mildred Yates
Paul Schlue	Fern Schlue
David Scott	Jan Scott
Larry Shugart	Anna Shughart
Robert Rockwell	Donna Rockwell
Ralph Ward	Norma Ward
Ted Curtis	Nancy Curtis

Fred Nuss	Lucille Nuss
William Vincze	Keith Florian
Emmitt Taylor	Hazel Taylor
David Spencer	Joyce Gibson
Robert Kelley	Karen Kelley

Eleanor Spencer

Conflict Within The Class

20. In Apr 80, now Absent Class Members Richard B. Paynter and Lawrence Floyd together with Denver Architect Edwin Warner, came to the Winslows to option two large building cites for a 15 unit condominium project. About the same time, Building Contractor David Cornwell had completed three Morgan Heights homes including his own and was about done with a fourth one for Joseph Heagney, who is also in the building business. Both Cornwell and Heagney were interested in building further homes in Morgan Heights.

21. Real Estate Broker Ted Curtis, with Contractor Lawrence Floyd had built seven homes and had two more "in the wings." They had optioned two lots from the Winslow children

for two more spec homes.

22. On 1 May 79, Paynter and Floyd purchased eight additional sites for further residential development.

23. Home Developers Heagney, Cornwell, Paynter, Floyd, and Curtis all resided in Morgan Heights and were responsible for the surge of home building in late 1977, all of 1978 and the first part of 1979.

* * *

24. Lawsuit Leader/Condo Developer Keith D. Williams was hard at work on his condo/patio home development called Country Club Estates, which adjoins Morgan Heights to the southeast. The estimated completion cost: $3,000,000. John Fillingham was moving ahead with his new development Rolling Hills, another subdivision adjoining Morgan Heights on the west. Banker/Land Developer David E. Steger had more than half of his real estate development sold

out in Fort Morgan. Lee O'Neil was beginning to develop his subdivision south of Brush, a few miles east of Fort Morgan. (Williams, Fillingham, Steger, and O'Neil are all Named-Plaintiffs in this lawsuit against the Winslows.)

25. Morgan County Attorney E. Ord Wells, a severe Winslow adversary, was trying hard to sell his Three Lakes, Inc. property, which adjoins Morgan Heights to the east.

26. Adversaries Williams, Steger, Fillingham and O'Neil all resided in Morgan Heights, but have property to develop OUTSIDE and either adjoining or close by.

27. This is what was going on just prior to the filing of the Morgan Heights lawsuit 21 Jun 79. After that date, every bit of growth in Morgan Heights came to a "screaching halt!" No more Paynter/Floyd/Warner condos; Heagney was stopped cold as were Floyd and Curtis, who could not pick up the option on Winslow's daughter's lot.

28. What did happen was that everything was GO with Williams and his condo program, Fillingham and his project west, Steger and O'Neil were going great guns, and the Three Lakes, Inc property, managed by County Attorney Wells SOLD to a developer for $310,000 on 18 Aug 81. (The Wells group paid $15,000 for this 155 acre development property in 1963.)

29. This Court has got to ask the question: "How can Real Estate Developers Williams, Fillingham, Steger, and O'Neil fairly PROTECT the interests of Absent Class Members Paynter, Floyd, Curtis, Heagney, and Cornwell with property to develop within Morgan Heights?" They are obliged to PROTECT the interests of the Absent Class Members as per CRCP 23, which is identical to FRCP 23 and the applicable part follows:

Rule 23. Class Actions

(a) Prerequisites to class actions.

One or more members of a class may sue

> or be sued as representative parties on behalf of all only if:
> (4) The representative parties (Williams, Fillingham, Steger, O'Neil) fairly and adequately PROTECT the interests of the class. (Capitalization and underscore for emphasis.)

30. There is ample authority to show that when there is conflict of interest between Named-Plaintiffs and the Absent Class Members, there can be no Class.

31. The Trial Court knows about this severe conflict of interest, the Colorado Court of Appeals knows about this conflict of interest, the Colorado Supreme Court is aware of the conflict, and so is the U.S. District Court and the U.S. Court of Appeals, Tenth Circuit. Yet, not one of these Courts,up to this point, has done anything to protect the interests of the Absent Class Members.

32. As per CRCP 23(a)(4), which has been quoted, it is the obligation of the Named-Plaintiffs to PROTECT the interests of the

Absent Class Members. This didn't happen in the Morgan Heights case, and to the contrary, the Named-Plaintiffs have harmed financially all of these five Absent Class Members who are or were Morgan Heights Real Estate Developers. (See Map, Appendix F.)

33. Federal Administrative Judge Richard B. Paynter, who was a Morgan Heights resident and a Real Estate Developer, wrote a letter to Class Attorney Robert J. Dyer III, 11 Nov 80, and here are some significant excerpts:

> "We definitely feel that you and one or more of the named plaintiffs have failed to represent us or our rights in any respect. On the contrary, you have caused us substantial and irreparable damage and continue to do so by insisting that this case go to trial rather than working on a bona fide effort to settle the case.
>
> Never, in my many years of the practice of law, have I been treated by another attorney in the manner that you have treated me. Again, I reiterate, NEVER, NEVER in my entire practice of law have I been treated in this manner.
>
> It was incumbent upon you to meet with all of us (Absent Class Members) to

determine the desires of the named class in this action rather than to continue it in an attempt to, as Mr. Garthwaite stated, conduct a "railroad job."

You and the named plaintiffs are well aware of the fact that Mr. Edwin Warner, architect, and I had in the process a plan for the development of condominiums, in the Second Addition. As a matter of fact, one or more of the named plaintiffs had seen the very detailed and complete plans of these condominiums, and you at that time advised Mr. Rosener that I had concluded that we might have to proceed through a planned unit development hearing prior to the development of these condominiums. You and one or more of the named plaintiffs have also known throughout these proceedings that Mr. Floyd and I had substantial property interests in Morgan Heights.

May I conclude by stating our total dissatisfaction with the manner in which you have conducted this litigation and the manner in which you have treated not only Mr. Floyd and myself but the Wards, Mr. Garthwaite and many others of the unnamed plaintiffs by totally failing to consult us relative to what we may desire even though you have been fully advised of our interests.

We do not want you to represent us in any manner and deny that you do."

Yours very truly,

Richard B. Paynter

34. Attorney Raymond C. Johnson, who repesented the Winslows in this Morgan Heights case, filed a Motion to go before either the United States Court of Appeals or the Colorado Court of Appeals. It was titled: MOTION FOR EXCLUSION FROM CLASS. Here are a few significant parts of this Motion:

"Neither my deceased partner's executrix nor I want to be a member of a class opposing the Winslows, whose cause we support.

There are numerous conflicts of interest in this case between the named Plaintiffs and members of the purported class. Mr. Dyer has never represented my interests or those of the executrix of James Reed's estate, nor can he do so.

The continuance of this lawsuit, contrary to my wishes and the wishes of numerous non-party Plaintiffs in this purported class, continues to place a dead hand on sales in the subdivision, and is damaging my personal and property interests."

35. In the August 4, 1983 issue of THE ROCKY MOUNTIAN NEWS, here is a significant quote:

> "This is as odd as a $3 bill," said Attorney Ray Johnson, who accepted a subdivision lot in lieu of legal fees. "I certainly don't want to pay Dyer's fees."

Bias /Prejudice Of Court Reporter

35. On 2 Dec 81, Attorney Raymond C. Johnson, representing the Winslows, brought up the conflict of interest between Named-Plaintiffs O'Neil/Steger/ Williams/Fillingham and the five Absent Class Members who were developing property within Morgan Heights (Paynter/Floyd/Cornwell/Heagney/Curtis.) Judge Leh denied the Motion for Class Decertification and then said something like this:

> "O'Neil's real estate development is near Brush, distant from Morgan Heights. Steger's development is in Fort Morgan but of a different type than Morgan Heights. That leaves Mr. Williams and Mr. Fillingham, with adjoining land to Morgan Heights. Now, if they had really

wanted to harm the Winslows, they would not have brought the lawsuit in the first place, they would have just let Morgan Heights go to pot."

36. Morgan Heights was not "going to pot." Quite the opposite, it was progressing in an orderly fashion, and was in compliance with all government regulations. In fact,the year before the lawsuit was filed 21 Jun 79, was the biggest property sales year in the history of Morgan Heights' 24 years of development.

37. A day or so later, Winslow made an Affidavit of approximately what Judge Leh had said. In Jan 82, BEFORE the major portion of the trial, Attorney Johnson filed another Original Proceeding in the Colorado Supreme Court to disqualify Judge Leh and used the "Williams/Fillingham" statement in an Affidavit which the Winslows signed. In Oct 82, the Winslows filed another Original Proceeding in the Colorado Supreme Court and again used the Leh statement regarding how Williams

and Fillingham helped the Winslows by filing the lawsuit against them 21 Jun 79.

38. Winslow then requested testimony of certain witnesses and also the Judge Leh comments of the hearing 2 Dec 81. When the transcript arrived, the Fillingham/Williams comments by Judge Leh were omitted and Court Reporter David A. Martin could not find the partial testimony of five witnesses favorable to the Winslows. Here is precisely what Court Reporter Martin said in his letter dated 12 Nov 82:

Dear Mr. Winslow:

Per your request for the testimony of the various witnesses, I have completed what I could find. I could not find the testimony you requested as being asked by Mr. Johnson for the following persons: Mr. and Mrs. Curtis, Mr. Alsip, Mrs. Kelley, Mrs. Larson. Mrs. Floyd and Mrs. Doty were just asked if they agreed with what their husbands had said.

With kindest pesonal regards, I am,

Yours very truly,

David A. Martin

39. Shortly after this extraordinary revelation, Winslow brought this to the attention of the Fort Morgan Times in several Letters To The Editor as to the credibility of the Court Reporter and this matter was also presented to the Trial Court 10 Jan 83 and subsequently to the Colorado Court of Appeals and the Colorado Supreme Court. There was no rebuttal to any of this by Court Reporter Martin and he could have had his "Day In Court" 8 Feb 83 when he was subpoenaed into Court to testify about the record. Trial Court Judge Marvin W. Foote would not permit testimony of Martin, and Martin did not demand to be heard on the issue of his credibility. Not until Apr 80 did Court Reporter Martin rebutt the fact that he could not find the testimony of the five witnesses requested, and he never did address the OMITTED comments of Judge Leh at the 2 Dec 81 hearing regarding Williams and Fillingham.

40. With all of these facts regarding the credibility of Court Reporter Martin and how these facts were put before the Colorado Courts, would it not be the fear of anybody ordered to purchase a transcript from such a Court Reporter for $10,000 to $15,000, to be concerned that this Court Reporter was biased and prejudiced against the party questioning his credibility? Would it not be the fear of any person that this Court Reporter might change testimony that could severely damage the party paying for the transcript? This is why the Winslows did not purchase the transcript, and this is why they filed the REMOVAL PETITION with the U.S. District Court nine days after the ORDER from the Colorado Court of Appeals, which demanded the Winslows purchase this incomplete transcript. (The Winslows had also been turned down by the Colorado Supreme Court on this

very issue at least two times. Thus, they had exhausted the State remedies for their Civil Rights as per U.S. Const., Art. V & XIV.)

The Winslow Removal Petition

41. When the Colorado Court of Appeals ordered the Winslows to produce the Court Reporter Martin transcript on 8 Jun 83, and because the Winslows had attempted numerous times in the Colorado Court of Appeals and in the Colorado Supreme Court to get a new trial because of the incomplete transcript and because of the omission in the transcript of 2 Dec 81, the only thing they could do was go the "Removal Petition Route" in the U.S District Court in Denver.

42. Everything made an issue in this PETITION to this U.S.Supreme Court was raised in the Winslow REMOVAL PETITION. None of the issues went to the merits of the Morgan Heights case. All are U.S. Constitutional issues.

43. It seems to the Winslows that the Removal Petition, which was filed, followed the exact intent of all Federal Removal Statutes. These statutes were designed to give relief to citizens who have been dealt injustice in a State Court.

44. One of the leaders in approving 28 USC 1443, which goes to Civil Rights, had this to say on the Senate floor prior to the passage of Section 901 of the Civil Rights Act of 1964:

SENATOR DODD

> "It would be extremely difficult to specify with precision the kinds of cases which ought to be removable under 28 USC 1443. This is true because of the many and varied circumstances which can and do arise in civil rights matters. Accordingly it seems advisable to allow the Courts to deal case by case with situations as they arise, and to fashion the remedy so as to harmonize it with other statutory remedies made available for denials of equal civil rights." (110 Cong. Rec. 6956) (Emphasis added.)

45. Winslows feel that the Removal Procedure fits the Winslow case "like the paper on the

wall." Look at all of the U.S. Constitutional Rights that have been violated by adverse parties to the Winslows and look at the injustice done to more than 105 Morgan Heights Absent Class Members. The U.S. District Court only looked at the voluminous documents ten days and then remanded it back to the Colorado Court of Appeals. The Motion For Reconsideration was filed a few days later then denied 29 Jul 83. The Notice of Appeal was filed 1 Aug 83, and was DISMISSED without review 30 Nov 83. A Petition For Rehearing was made a short time later and it was denied 5 Jan 84.

ARGUMENTS FOR REMOVAL

46. It is believed the U.S. District Court erred in all counts as to why they remanded this case back to the Colorado Court of Appeals. Here is a point by point analysis rebutting the U.S. District Court Order:

(1) Alleged Defect: All Defendants did not consent to removal.

Answer: Adversary Morgan County is a Defendant/Appellee, and the two Winslow Corporations were not addressed in any of the Judgments. The Morgan Heights Sewer/Sanitation Company is defunct.

When Removal Petition is filed under 28 USC 1443 as to civil rights, all Defendants need not join in. Grenchik v. Mandell, 373 F.Supp 1298; Bridgeport Ed. Assn. v. Zinner, 415 F.Supp 715.

(2) Alleged Defect: Petition failed to meet 30 day requirement, case is four years old, see 28 USC 1446(b).

Answer: Apparently U.S. District Court did not read the second paragraph under 28 USC 1446(b). For the convenience of this U.S. Supreme Court, the second paragraph is cited:

Procedure For Removal

> If the case stated by the initial pleading is not removable, a petition for removal may be filed within 30 days after receipt by the Defendant, through service or otherwise, a copy of an amended pleading, motion, or order or other paper from which it may first be ascertained that the case is one which has become removable.

The Morgan Heights case was removed from the Colorado Court of appeals AFTER the Order of 8 Jun 83, which violated the Winslows' Constitutional Rights, Art. XIV. The Morgan Heights case was not ready for Removal until 8 June 83, therefore it complies with 28 USC 1446(b).

(3) Alleged Defect: Claims made by Petitioner Winslow were never asserted in Complaints/Pleadings in State Court as required by 28 USC 1441.

Answer: There were numerous U.S. Constitutional violations alleged in the State Courts, the main one being "Fair Trial/Impartial Judge," which goes to U.S. Const., Art. XIV. The incomplete transcript issue goes to "fair appeal." There were also questions about the constitutionality of two Colorado Rules of Civil Procedure CRCP 38 and CRCP 97, which have been cited earlier in this Petition.

When U.S. Constitutional issues are raised, and they were, not only in the Trial Court, the Colorado Court of Appeals, but in the Colorado Supreme Court as well. The U.S. District Court can take jurisdiction as per 28 USC 1441(b) which goes to "Claim or Rights arising under the Constitution . . . "

(4) Alleged Defect: On the facts of this case, 28 USC 1443 is not applicable. See Peltier v. Peltier, 548 F.2d 1083.

Answer: Title 28 USC 1443 goes to Civil Rights, and in the Morgan Heights case, pleadings were filed relative to jury demands, fair trial/impartial judge, fair appeal, racial discrimination, all of these issues are covered under Title 28 USC 1443.

The case of Peltier v. Peltier was a divorce case alleging that women got

a better break then men and has no relevance or comparability to the Morgan Heights case.

47. The Winslows sought a Declaratory Judgment Hearing with a jury in the U.S. District Court, but were denied. The Winslows also sought a hearing with regard to the Removal Petition, and were denied. They received no "Day In Court."

Old Case Backs Up Removal

48. The U.S. Court system is a check on State Court systems. A 1799 case is highly significant. In the Winslow Morgan Heights case, this citation from Fowler v. Lindsay, 3 U.S. 411 at 413 shows this:

> A certiorari . . . can only issue as original process, to remove a cause, and change the venue when the superior court is satisfied that a fair and impartial trial will not otherwise be obtained; and it is sometimes used, as auxilary process, when for instance, diminution of record is alleged, or writ of error; but in such cases, the superior court must have jurisdiction of the controversy.

49. In the Winslow case, they did not get

a fair trial before an impartial judge. The other issue is the fact that they cannot obtain a complete record and significant judicial comments were omitted.

50. Even BLACK'S LAW DICTIONARY has this to say on diminution and is found on Page 412 of the Fifth Edition:

> Diminution. Incompleteness . . . a word signifying that the record sent up from an inferior to a superior court for review is incomplete, or not fully certified.

51. Even back in 1799, 185 years ago, this "Fair Trial/Impartial Judge" issue and the "Incomplete Transcript" issue was the basis for REMOVAL. When this was reviewed by the U.S. District Court, it did have jurisdiction but failed to continue jurisdiction by the Order Of Remand dated 27 Jun 83. It should have kept jurisdiction as per this significant U.S. Supreme Court decision in Fowler v. Lindsay supra.

Disqualification Of Judge

52. In Colorado there is racial discrimination against the White Civil Defendant, because the Black and Chicano Criminal Defendant gets a better break when it comes to disqualifying a judge. Under CRCrP 21(b), the Criminal Defendant files a Motion through his attorney for the disqualification of judge with two Affidavits signed by non-relatives, and the judge has no discretion, he must step aside and loses jurisdiction at that point.

53. On the other hand, by CRCP 97, a White Civil Defendant files a Motion To Disqualify a judge with Affidavit, the judge rules upon his own bias and prejudice. It is argued that this inhibits an attorney or Civil Defendant from filing a Motion To Disqualify in the first place, because such a Motion could "tick a judge off." The Winslows believe this is exactly what happened to them,

that Judge Leh was "ticked off" because of the initial Motion To Disqualify and the subsequent ones.

54. A 9 Jan 84 Original Proceeding in the Colorado Supreme Court, the discretion seems to be eliminated, Carl Johnson v. District Court, 674 P.2d 952, which takes the exact same position as CRCrP 21(b). Winslows did't have the benefit of this decision when they filed three separate Petitions before the Colorado Supreme Court.

55. In the Winslow case, the Motion for the disqualification of Judge Leh filed with Affidavit 28 Nov 80, was denied by him. If the same thinking is spelled out in Johnson v. District Court, supra, was in effect, Judge Leh would have lost jurisdiction 28 Nov 80, but he held on until, by his own Motion, he disqualified himself 21 Jan 83, more than two years after three devastating Judgments.

56. In Johnson, they cite a United States Supreme Court landmark case of Berger v. United States, 255 U.S. 22 and also People v. District Court, 560 P.2d 828; Taylor v. Hays, 418 U.S. 488.

57. In Berger, a 1921 case, the same concept applies. A Motion For Disqualification of Judge is filed with Affidavit(s) and the judge loses jurisdiction at that point--there is no discretion. Why should there be? Why should the judge want to stay on?

58. The Winslows should be given a new fair jury trial before an impartial judge in the U.S. District Court for Colorado.

Legal Arguments On Transcript Issue

59. There are literally hundreds of cases that state that when an Appellant cannot get a complete transcript, he is granted a new trial. Such a case is Calhoun v. U.S., 384 F.2d 180, cert den 414 U.S. 1024. In this

case, Calhoun was from Louisana and apparently the trial was being conducted in Mississippi. The closing arguments were either not transcribed by a Court Reporter or the Court Reporter lost his notes, in any event, here is what the U.S. Attorney said from reconstructed notes:

> "Let's not give all the money to the people from Louisana and the lawyers from Louisana, let's save some money for the people in Mississippi."

60. On the basis of this statement alone Calhoun was given a new trial. The fact that the transcript of the closing arguments were lost or misplaced was immaterial in this instance because of the prejudicial comment by the U.S. Attorney.

61. The case went on to say that had this statement not been made, Calhoun would have still been given a new trial because the closing arguments were not recorded or they were lost. This is because of the Court

Reporter Act, 28 USC 753.

62. In C.J.S. under the heading APPEAL & ERROR, §1946 it says regarding Imperfect Record:

> A new trial or other proceeding may be directed, where the record is so defective or deficient as to prevent the appellate court from rendering final judgment.

63. Cases that go with this theory include Anders-Hightower, Inc. v. Huie & Son, 127 So. 21; Lyon v. Crabtree, 64 S.W. 2d 24; Mills v. Latham, 219 S.W. 2d 609; and numerous other citations omitted.

64. In the Winslow case, there is a difference. Not only could the Court Reporter not find the testimony of five witnesses favorable to the Winslows, but he omitted prejudicial comments by the Trial Court Judge. The other factor is the bias and prejudice of the Court Reporter because all of this aired in four levels of the Court system,

plus the press. This Court Reporter's credibility was questioned and would he not have to be biased and prejudiced against the Winslows? This is why the Winslows did not spend somewhere between $10,000 and $15,000 to get a transcript which could have been "doctored." This would have to have been a concern of anybody in a similar position to what the Winslows are in.

REASONS FOR GRANTING REVIEW

65. Here is a point by point summary of the reasons for granting review of this PETITION:

A. More than 100 Absent Class Members put into a Class Action lawsuit, certified without due process.

B. The Morgan County Trial Court put a legal cloud on the property of every Class Member.

C. The Winslows did not receive a fair trial before an impartial judge. They tried to disqualify this judge EIGHT times--denied each time.

D. Four jury demands denied.

E. Judge rewards criminal act.

F. Trial Court Judge gives adversary free sewer tap.

G. Judge gave away five acres of Winslows' land earmarked for the residents of Morgan Heights to all of MORGAN COUNTY, when it wasn't even an issue by anyone.

H. Court Reporter can't find testimony of five witnesses favorable to the Winslows.

I. Court Reporter omits prejudicial remarks by Trial Court Judge.

J. Because Winslows questioned the credibility of Court Reporter Martin, it is believed he is biased and prejudiced against them.

K. The REMOVAL PETITION should not have been remanded to the Colorado Court of Appeals.

L. The U.S. Court of Appeals should have reviewed the Winslow appeal regarding ORDER OF REMAND as per 28 USC 1447(d).

M. It is believed that CRCP 38, concerning civil juries, and CRCP 97 as to disqualification of judges in civil cases are both unconstitutional because the Criminal Defendant gets a better break on the counterpart criminal rules.

66. It is believed that any of the issues listed in the above summary would be reason

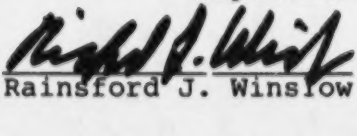
enough to grant a review of this PETITION.

CONCLUSION

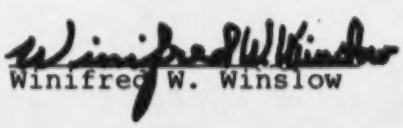
67. It is the prayer of the Winslows that this Honorable Supreme Court of The United States will grant Certiorari and consider granting the Winslows a new trial with a jury with an impartial judge in the United States District Court. Berger. v U.S., Supra.

68. Not only are the lives of the Winslows at stake in this critical case, but the lives and property values of more than 105 Absent Class Members, most of whom did not want to become involved in the first place.

Respectfully submitted,



Rainsford J. Winslow



Winifred W. Winslow

Opposing Counsel

E. Ord Wells, Esq.
229 East Kiowa Ave.
Ft. Morgan, Co 80701
Representing:
Morgan County, CO

Robert J. Dyer III
825 Logan
Denver, Co 80203
Representing:
Plaintiffs

VERIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF MORGAN)

RAINSFORD J. WINSLOW and WINIFRED W. WINSLOW, of lawful age, being first duly sworn upon their oaths, depose and state as follows:

That they have read the foregoing PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS TENTH, CIRCUIT; know the contents thereof, and that the statements therein contained are true and correct to the best of their knowlege, information, and belief.

Rainsford J. Winslow Winifred W. Winslow

SUBSCRIBED AND SWORN TO BEFORE ME THIS 23rd day of March, 1984.

WITNESS my hand and official seal.

My commission expires August 4, 1987.

(SEAL)
NOTARY PUBLIC
STATE OF COLORADO
JEAN K. NIELSEN

Notary Public
Jean K. Nielsen
506 Deuel Street
Fort Morgan, Co 80701

APPENDIX A.

United States District Court
District Of Colorado

Keith D. Williams, et al., Plaintiffs-Appellees-Respondents, v. Rainsford J. Winslow, et al., Defendants-Appellants-Petitioners, Morgan County, Colorado, et al., Defendants-Appellees-Respondents. Tr. Ct. 79 CV 97, No. 83 CA 0211, No. 83-Z-1085.

Filed: June 27, 1983.

Order Of Remand

THIS MATTER is before the Court on respondent Keith D. Williams' Motion for Remand. For the reasons stated below, the Motion will be granted.

From the Court's careful examination of the file and pleadings concerning the Petition for Removal, it is manifest that the Petition contains numerous defects which are fatal to this Court's retaining jurisdiction. These defects include, inter alia, the following:

(1) The Petition for Removal itself reveals that not all defendants in this action have consented to the removal, as required

under federal law. See Chicago, R.I.&P. Ry. Co. v. Martin, 178 U.S. 245 (1900).

(2) The Petition fails to meet the 30-day statutory requirement for filing with the federal court, as this case is over four years old and is currently on appeal to the Colorado Court of Appeals. See 28 U.S.C. § 1446(b).

(3) The claims raised by petitioners which allegedly confer jurisdiction on this Court have never been asserted in any of plaintiff's complaints or other pleadings in the state courts, and thus fail to meet the requirements of 28 U.S.C. § 1441.

(4) On the facts of this case, 28 U.S.C. § 1443 is not applicable. See Peltier v. Peltier, 548 F.2d 1083, 1084 (1st Cir. 1977).

Based on the foregoing, the Court concludes "that the case was removed improvidently and without jurisdiction," and therefore must be remanded. 28 U.S.C. § 1447(c). Addition-

ally, the Court concludes that nothing further would be served by ordering a hearing on the Motion to Remand. Accordingly, it it

ORDERED that the Motion to Remand is granted and the case is remanded to the Colorado Court of Appeals . It is

FURTHER ORDERED that the Motion for Leave to File Memorandum and Participate in Argument as Amicus Curiae is denied. It is

FURTHER ORDERED that Respondent Keith D. Williams' request for costs pursuant to 28 USC § 1446 is denied. It is

FURTHER ORDERED that the Motion for Declaratory Judgment With Jury Demand and Motion for Injunctive Relief Regarding Citation filed by defendants Rainsford J. Winslow and Winifred W. Winslow are moot.

DATED at Denver, Colorado, this 27st day of June, 1983.

BY THE COURT:

ZITA L. WEINSHIENK, Judge
United States District Court

APPENDIX B.

United States District Court
District Of Colorado

Keith D. Williams, et al., Plaintiffs-Appellees-Respondents, v. Rainsford J. Winslow, et al., Defendants-Appellants-Petitioners, Morgan County, Colorado, et al., Defendants-Appellees-Respondents. Tr. Ct. 79 CV 97, No. 83 CA 0211, No. 83-Z-1085.

Dated: July 29, 1983.

Minute Order

ORDER ENTERED BY JUDGE ZITA L. WEINSHIENK

Joan E. Boline, Admin. Secretary Dated: July 29, 1983

It is ORDERED that the Motion to Reconsider Order of Remand filed by Petitioners Winslow denied.

APPENDIX C.

United States Court Of Appeals
Tenth Circuit

Keith D. Williams, et al., Respondents-Appellees, v. Rainsford J. Winslow, et al., Petitioners-Appellants, Morgan County, Colorado, et al., Respondents-Appellees. Tr. Ct. 79 CV 97, No. 83 CA 0211, No. 83-Z-1085, No. 83-2016.

Filed: November 30, 1983.

Before Honorable Robert H. McWilliams, Honorable James E. Barrett and Honorable William E. Doyle, Circuit Judges, United States Court of Appeals.

Opinion

This matter is before the court on appellants' motion to stay certain proceedings now pending before the Colorado Court of Appeals. The matter is also before us on appellees' motions to dismiss for lack of jurisdiction and appellants' response thereto.

Generally, appeals, such as this, from orders remanding removed actions to the state court are not reviewable by appeal or otherwise. See 28 U.S.C. § 1447(d); Thermtron Products, Inc. v. Hermansdorfer, 423 U.S. 336 (1976). Appellants' argument that removal to the federal district court was properly made under either subsection of 28 U.S.C. § 1443 is frivolous and without

legal merit.

We conclude that this court lacks jurisdiction to review the order of remand, and accordingly, the appeal must be dismissed. Gravitt v. Southwestern Bell Telephone Co., 430 U.S. 723 (1977).

In view of our disposition of the appeal, we conclude that the motion for stay is moot.

APPEAL DISMISSED:

HOWARD K. PHILLIPS
Clerk

APPENDIX D.

United States Court Of Appeals
Tenth Circuit

Keith D. Williams, et al., Respondents-Appellees, Rainsford J. Winslow, et al., Petitioners-Appellants, Morgan County, Colorado, et al., Respondents-Appellees, Tr. Ct. 79 CV 97, No. 83 CA 0211, No. 83-Z-1085, No. 83-2016.

Dated: January 5, 1984.

Before Honorable Robert H. McWilliams, Honorable James E. Barrett and Honorable William E. Doyle, Circuit Judge, United States Court of Appeals.

Order

This matter comes on for consideration of appellants' petition for rehearing.

Upon consideration thereof, the petition is denied.

HOWARD K. PHILLIPS, Clerk

APPENDIX E.

Morgan County District Court
State Of Colorado

Keith D. Williams, et al., Plaintiffs, v. Rainsford J. Winslow, et al., Defendants, Tr. Ct. 79 CV 97.

Filed: November 28, 1980.

Motion Of Rainsford J. Winslow and Winifred W. Winslow To Disqualify The Honorable James R. Leh

COME NOW the Defendants Rainsford J. Winslow and Winifred W. Winslow by their attorneys JOHNSON & REED and Raymond C. Johnson, and pursuant to Rule 97, C.R.C.P., move that the Honorable James R. Leh disqualify himself as the trial judge in the within action for the reason set forth in the Memorandum relating

to disqualification filed herewith and supporting Affidavit.

JOHNSON & REED

Raymond C. Johnson, #3178

* * *

Filed: November 28, 1980.

Memorandum In Support Of Motion For Disqualification

The Defendants Winslow have this date filed their Motion for Disqualification of the Honorable James R. Leh to sit as trial judge upon the within action.

They have done so regretfully, and respectfully, and only after a great deal of discussion with advisors and counsel, and substantial and serious consideration.

The first reason for requesting that the Honorable James R. Leh disqualify himself is that whether he recognizes it or not, it appears from his remarks made at time of ruling on Motion for Summary Judgment that he

may be biased or prejudiced by reason of his personal experiences as a County Attorney and County Commissioner. In said ruling, the Court adverted to his personal experiences as a County Attorney and County Commissioner, which were not in evidence in the case or proper for consideration therein.

Even if the Court believes that his experiences in representing a county and in being a public official of a county will not influence him in this action, it is respectfully submitted that he cannot help having a subconscious bias as a result of the views and opinions he has formed in acting as County Attorney and as a County Commissioner in the past.

Next, the Honorable James R. Leh has a reputation in the Community as a "consumer advocate."

Knowledge of this reputation in the community has reached the Defendants Winslow

from various sources.

It is not believed that the Court would in any way have a conscious bias or prejudice in favor of the Plaintiffas as "consumers" i.e. home purchasers in a subdivision, but again, it is submitted that having had a bias in favor of persons in the position of "consumers" prior to his appointment as a judge the Court cannot help having a subconscious bias or prejudice in favor of the Plaintiffs in this action.

Accordingly, it is respectfully requested that the Court disqualify himself pursuant to the provisions of Rule 97, C.R.C.P.

JOHNSON & REED

Raymond C. Johnson, #3178

* * *

Dated: November 24, 1980.

Affidavit Of Defendants Winslow in Support Of Motion To Disqualify

The Defendants Rainsford J. Winslow and

Winifred W. Winslow, being sworn upon their oaths, and of lawful age, depose and state as follows:

1. That the transcript, a copy of which is attached to Defendants' Memorandum in Support of Motion to Disqualify, is a true and accurate transcript of the remarks of this Honorable Court made at time of ruling on summary judgment, reflecting the Court's consideration of his own experiences as County Attorney and as County Commissioner, not in evidence before him at the time.

2. That they have heard from sources in the community that the reputation in the community of the Honorable James R. Leh prior to his appointment as a judge, was a reputation as a "consumer advocate", dedicated to the interests of persons as "consumers", who would be in position comparable to the purchasers of homes and lots

within the Winslow subdivision and Morgan Heights subdivision, Morgan County, Colorado, and thus in the position of Plaintiffs herein.

FURTHER AFFIANTS SAY NOT.

Rainsford J. Winslow
Winifred W. Winslow

REPORTER'S PARTIAL TRANSCRIPT
(Relevant Part, Judge James R. Leh's Ruling)
Summary Judgment Hearing, 9 Sep 80

FACTUAL NOTE:

It was undisputed that the Morgan County Commissioners had been getting Colorado Highway Users Tax Funds for the Morgan Heights roads starting in 1973, but stopped using these funds on the Morgan Heights roads in 1976, even though they were still getting these funds. Here is the relevant part of the transcript of Judge Leh's comments on Page 5,Lines 11 to 27:

THE COURT: Insofar as the use of the County tax--sorry--state highway users tax funds are concerned, I agree that may have some bearing on the outcome of either issue of implied or legal acceptance. How much I'm not sure. The Court simply states its

previous experience in this field, which I am sure is familiar to the parties involved, counsel involved. I was once a county attorney and also once a county commissioner and I am aware that perhaps, if anything, it debilitates against the argument that twenty year statute that is being argued for by counsel, since this wasn't even done, as I understand it, until '73. And at that point, just procedurally, what generally happens is that the state presents what you have sort of revealed here on a computer printout. And to put it rather bluntly, the County Commissioners are so tickled to death to get some money from the state they don't often look too carefully at what roads are included, but they look more carefully at what has been excluded, and do it from the standpoint of additional revenue to the county road fund.

* * *

Judge Leh denied the Motion For Summary Judgment on the road issue.

* * *

Transcript Certified by Court Reporter David A. Martin 28 Sep 80.

EPILOGUE

The revolting concept on "An Investment In The Court" has been presented. The Petition/Application to the Morgan County District Court, from Class Attorney Robert J. Dyer III, asks for $329,000, including $25,505 for Attorney/Instigator/Morgan Heights Resident Stanley I. Rosener for Class legal fees/costs. If Judicial Relief is not granted to the Absent Class Members, who wanted no part of the Dyer/Rosener legal services, and had no complaint about Morgan Heights, this is what the "Dyer Fee Formula" means to these nine Absent Class Members:

Name	Legal/Fee/Cost
Douglas Scott Winslow (Winslows' son) (One Lot)	$ 5,095
Deborah Winslow Hand (Winslows' Daughter) (One Lot)	5,095
Margaret Winslow Atwood (Winslows' Daughter) (One Lot)	5,095
Judge Richard B. Paynter, Morgan Heights Land Developer (Three Lots)	15,285
Lawrence Floyd, Morgan Heights Land Developer (Three Lots)	15,285
David Cornwell, Morgan Heights Land Developer (Two Lots)	10,190
Ted Curtis, Morgan Heights Land Developer (One Lot)	5,095
Joseph Heagney, Morgan Heights Land Developer (One Lot)	5,095
Charles/Sandra Mayer, New 1983 Residents Morgan Heights (Four Lots)	20,380

Money damages were awarded to Curtis ($600) and Floyd ($7,801). All other Absent Class Members will suffer in different degrees.

Lawsuit Instigators/Land Developers

These Four Lawsuit Instigators, with property to develop either ADJOINING or CLOSE by Morgan Heights, "Invested In The Court" the following amounts as per Attorney Dyer's Legal Fee Petition/Application.

Fillingham paid $3,800; O'Neil, $7,450; Steger, $7,750; and Williams, $8,100 while the litigation was in progress. All will be given appropriate credit. Here is how their "Court Investment" will work for them, unless there is Judicial Relief granted to the Winslows and the Absent Class Members:

Developer Name	Judgment Award	Class Legal Cost	Net Profit
Fillingham	$ 7,801	$ 5,095	$ 2,706
O'Neil	12,801	5,095	7,706
Steger	12,801	5,095	7,706
Williams	12,801	5,095	7,706

NOTE: Besides the "Court Profit," from the Judgment Awards, these four land developers, with the other 29 Plaintiffs, slowed and/or stopped Winslows, Paynter, Floyd, Curtis, Cornwell, and Heagney from seling Morgan Heights property, which meant virtually no competition from Morgan Heights.

APPENDIX F.

PAYNTER/WARNER
CONDO SITE
PAYNTER/FLOYD/CORNWELL/
HEGNEY/CURTIS PROPERTY
N
ROLLING
HILLS
JOHN
FILLINGHAM
MORGAN HEIGHTS
THREE LAKES INC. PROPERTY
MANAGED BY
COUNTY ATTORNEY
E. ORD WELLS
KEITH WILLIAMS
CONDO SITE
FORT MORGAN
COUNTRY CLUB
UNION PACIFIC RAILROAD
SOUTH PLATTE RIVER
D. E. STEGER DEVELOPMENT
PROPERTY SOUTHEAST CORNER/
CITY OF FT. MORGAN
CITY OF
FT. MORGAN
O'NEIL DEVELOPMENT
PROPERTY SOUTHEAST
BRUSH, COLORADO

THE WINSLOW MORGAN HEIGHTS CASE

Prologue

This Winslow Morgan Heights Case started 21 Jun 79, and still has not been concluded. It is the longest running case in the history of the Colorado 13th Judicial District with more than 2,500 pleadings/documents/exhibits. The Winslows legal fees are in excess of $200,000. This is why they are Pro Se. They can no longer afford the luxury of an attorney.

Just a few days ago (22 Mar 84), Attorney Robert J. Dyer III, representing the Plaintiffs, and supposedly representing the Absent Class Members, submitted bills of more than $329,000 to the Morgan County District Court. He petitioned the Trial Court to collect more than $5,000 per lot from present and previous Morgan Heights property owners, which includes the Winslows' three children, and the Attorney who represented Winslows in

this case. (Several own two or more lots.)

There are 71 of 105 Absent Class Members who stated they wanted no part of Attorney Dyer's representation and NEVER did. They PROTESTED by Court testimony, special appearances in the Court by several, affidavits and letters filed in the Trial Court, and by "opt-out forms" over the past four years that they wanted NOTHING to do with Attorney Dyer or the lawsuit.

When the U.S. Supreme Court reviews this Petition For Certiorari, it is believed it will be appalled by the injustice and severe U.S. Constituional violations made against the Winslows, and the Absent Class Members as well.

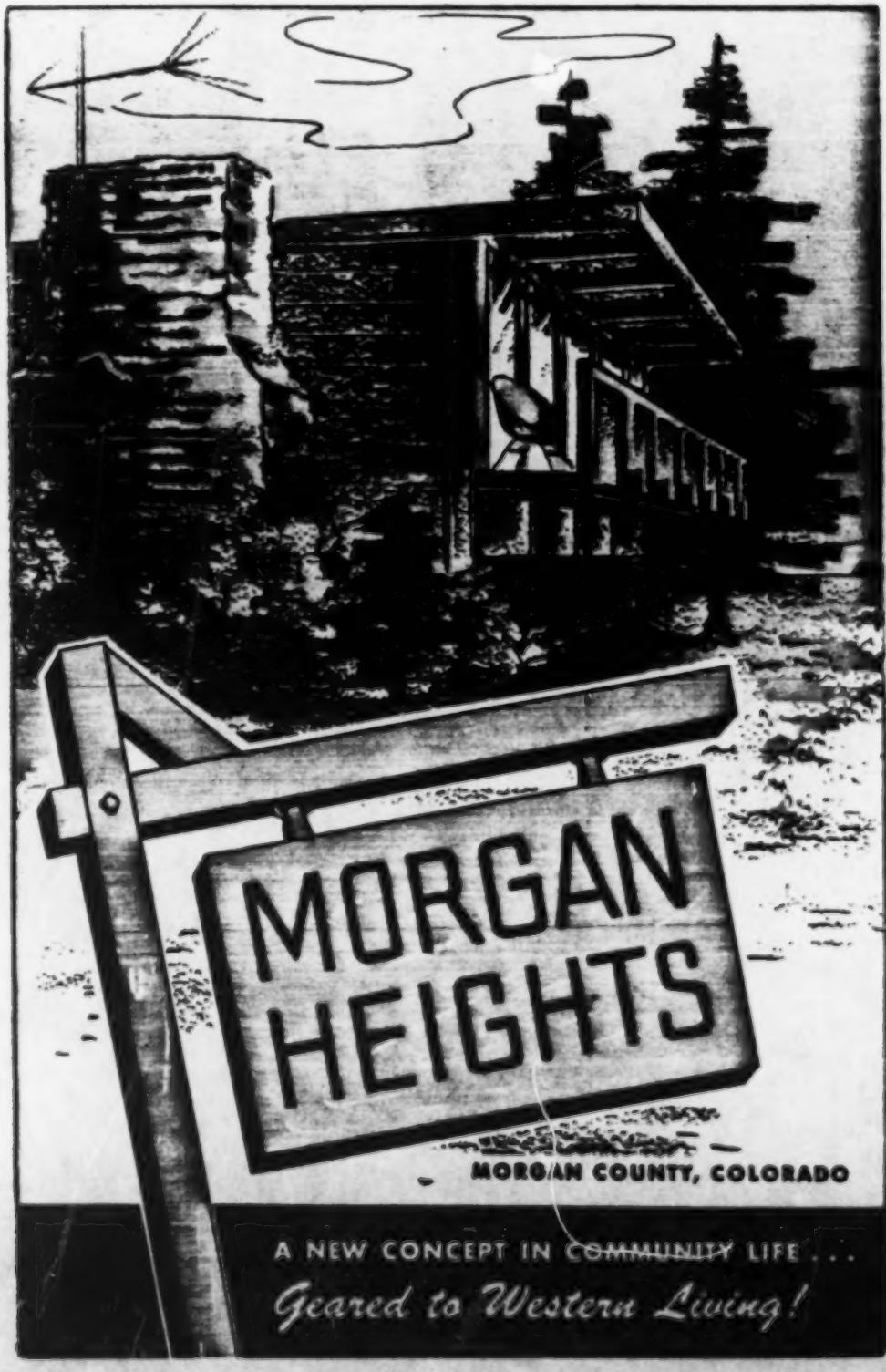
March 27, 1984

MORGAN HEIGHTS

P. O. BOX 81 • FT. MORGAN, COLORADO

Exciting Information

FOR


MORGAN
HEIGHTS
MORGAN COUNTY, COLORADO
A NEW CONCEPT IN COMMUNITY LIFE . . .
Geared to Western Living!

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THE MORGAN HEIGHTS *Story . . .*

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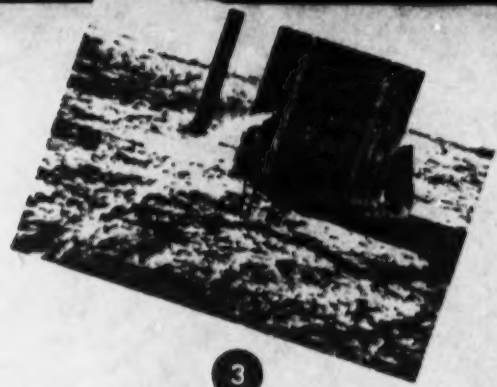

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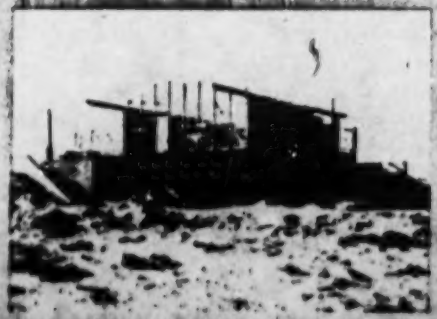

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1—The second and main slab in spring of '54. 2—Boy's Radio was Morgan Heights 1st TV reception outside equator. 3—Community water system and pump house installed, REA power brought in during summer of '54. 4—Morgan County family enjoys Sunday picnic beside Bald Ponds. 5—Bald Ponds in Morgan Heights recreational area. 6—Youngster gets his daily share of fish. 7—First Morgan Heights home started September 23, 1954. 8—First Morgan Heights home takes shape. 9—A scene with a view of pioneer workers in first building of many more yet to come. Story by Morgan County Club in cooperation with Morgan Radio.

MORGAN HEIGHTS *Building Restrictions*

Part I
RESIDENTIAL COVENANTS

A-1. SINGLE FAMILY DWELLING: No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling and a private garage for not more than three cars, which garage cannot be used for commercial purposes.

A-2. ARCHITECTURAL CONTROL: No building shall be erected, placed, or altered on any lot until the construction plan and specifications, and a plan showing the location of the structure, has been approved by the architectural control committee as to the quality of workmanship and material, harmony of external design and color with existing structures, and as to location with respect to topographic and finished grade elevation. No fence or wall shall be erected, placed or altered on any lot unless similarly approved. Approval shall be as provided in Part II.

A-3. DWELLING QUALITY AND SIZE: The ground floor of the main structure, exclusive of one story open porches and garages, shall be not less than 900 square feet for a one-story dwelling, not less than 800 square feet for a dwelling of more than one story; in the event of approval of construction of a multi-level dwelling, square footage thereof shall not be less than a total of 1,100 square feet of all levels combined, exclusive of open porches and garages.

A-4. SUBDIVISION OF LOTS: No lot shall be subdivided, but a combination of lots may be used for the construction of a larger home.

A-5. EASEMENTS: Easements for installation and maintenance of utilities, and such other services that may be necessary for the health, welfare and enjoyment of the residents of said area, are hereby reserved over the back 5 feet and the side 5 feet of every lot as indicated on the recorded plat of said subdivision. No structure shall be erected upon said area wherein the easement is hereby reserved, unless it be a fence, hedge or other structure that will not interfere with the maintenance of said utilities and services, and must be approved by the architectural control committee.

A-6. NUISANCES: No noxious or offensive activity shall be carried on upon any lot or lots, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood; all lots shall be kept free and clear of trash, weeds and rubbish. Lots not so kept may be cleared by Morgan Heights, Inc.; the owner shall be liable to said company for expenses involved in clearing said lot or lots.

A-7. TEMPORARY STRUCTURES: No structure of a temporary character, trailer, basement, tent, garage, barn or other outbuilding shall be permitted upon said property for residence or other purpose, except that a garage or part thereof may be used for the harboring of domestic servants, providing the specifications and plans be first approved by the architectural control committee as provided in paragraph A-2; completion of any dwelling shall be made within two years from the date of commencement of work.

A-8. SIGNS: All signs of any nature or for any purpose must be approved by the architectural control committee.

A-9. LIVESTOCK AND POULTRY: No cattle, animals or other livestock or poultry of any kind shall be raised, bred or fed on any lots, except dogs, cats or other household pets may be kept, provided they are not fed, bred or maintained for any commercial purpose.

A-10. GARBAGE AND REFUSE DISPOSAL: No lot shall be used or maintained as a dumping ground for rubbish. Garbage must be disposed of by means of a garbage disposal or other suitable means approved by the architectural control committee. Trash and other waste shall not be kept except in sanitary containers, the construction of which must be approved by the architectural committee.

A-11. WATER SUPPLY: No water well shall be drilled without the consent of the architectural control committee; all persons who desire water for any use shall be required to connect to the public water system operated by Morgan Heights, Inc., a non-profit Colorado corporation, and its successors and assigns, and shall be subject to assessments by said corporation on an equitable basis proportionate to the actual use of water. It is hereby expressly reserved unto Morgan Heights, Inc., to go upon the property of any owner or owners for the purpose of drilling for and supplying water to the other property owner or owners, and an easement for the maintenance of said well or wells is hereby expressly reserved unto said Morgan Heights, Inc., together with the right to carry said water across property or properties of other persons by buried pipelines, provided, however, that said easement shall not be so interpreted to disturb any existing structures located on said property or properties.

A-12. SEWAGE DISPOSAL: Sewage disposal shall be under the absolute control of the architectural control committee and shall be handled by Morgan Heights, Inc. All properties shall be subject to assessment for the maintenance of said sewage disposal proportionate to the use of said system.

A-13. VEHICLE PARKING: Owners of said property shall not be permitted to park, or cause to be parked, automobiles, trucks or other vehicles overnight on any of the streets within said subdivision, nor shall any trucks or other vehicles be so parked upon any premises or streets so as to interfere with the aesthetic qualities of said subdivision.

A-14. UNLAWFUL USE: No unlawful or immoral use shall be made of any of said property or any dwelling thereon.

A-15. FIREARMS: No firearms or other dangerous or destructive instruments shall be used on any lot or parcel of said land.

A-16. INTOXICATING LIQUORS: No commercial sale of malt, vinous, spirituous liquors or other intoxicants shall be conducted on any lot or parcel thereof.

A-17. YARD LIGHTS: Each residence constructed upon the premises herein described shall be required to keep burning from sundown to sunrise a light of a voltage, construction and location to be approved by the architectural control committee.

A-18. LANDSCAPING: All landscaping, including trees, shrubs, bushes and fences, shall be approved by the architectural control committee, and maintenance and care of said landscaping shall be subject to control by said architectural control committee.

A-19. OIL AND GAS: No lease for oil, gas or other minerals, or other hydrocarbons shall be entered into without the consent of 80% of the owners of the land covered by these restrictions.

A-20. MAIL BOXES: Mail boxes and the location and construction thereof shall be subject to the approval of the architectural control committee.

A-21. FUEL TANKS: All fuel tanks or other receptacles used for the storage of fuel shall be buried except that a tank for community heating may be located above the ground upon approval of the architectural control committee.

MORGAN HEIGHTS

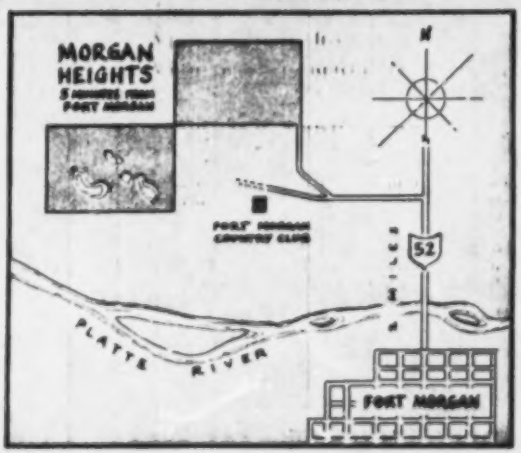
- ★ Large building sites, ideal for out-of-door living.
- ★ 80-acre recreational area for fishing, hiking, picnics and other activities. Golf course close by.
- ★ Controlled home construction, assuring maintained real estate values.
- ★ No alleys to become cluttered.
- ★ Fabulous view.
- ★ Single family dwellings only.
- ★ Community-owned and operated water and sanitation system.
- ★ Financing arranged.
- ★ A wonderful place to raise children.
- ★ A peaceful place to live.
- ★ A marvelous place to retire.

Part II
ARCHITECTURAL CONTROL COMMITTEE

B-1. MEMBERSHIP: The architectural control committee is composed of three persons residing in Morgan County, Colorado. A majority of the committee may designate a representative to act for it. In the event of resignation or death of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this covenant. At any time the then record owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the committee or to withdraw from the committee, or to restore to it any of its powers and duties.

B-2. PROCEDURE: The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee, or its designated representatives, fails to approve or disapprove within 30 days after the plans and specifications have been submitted to it, or in any event if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required, and the relative covenants shall be deemed to have been fully approved.

MORGAN HEIGHTS — *A Community Geared to Western Living!*



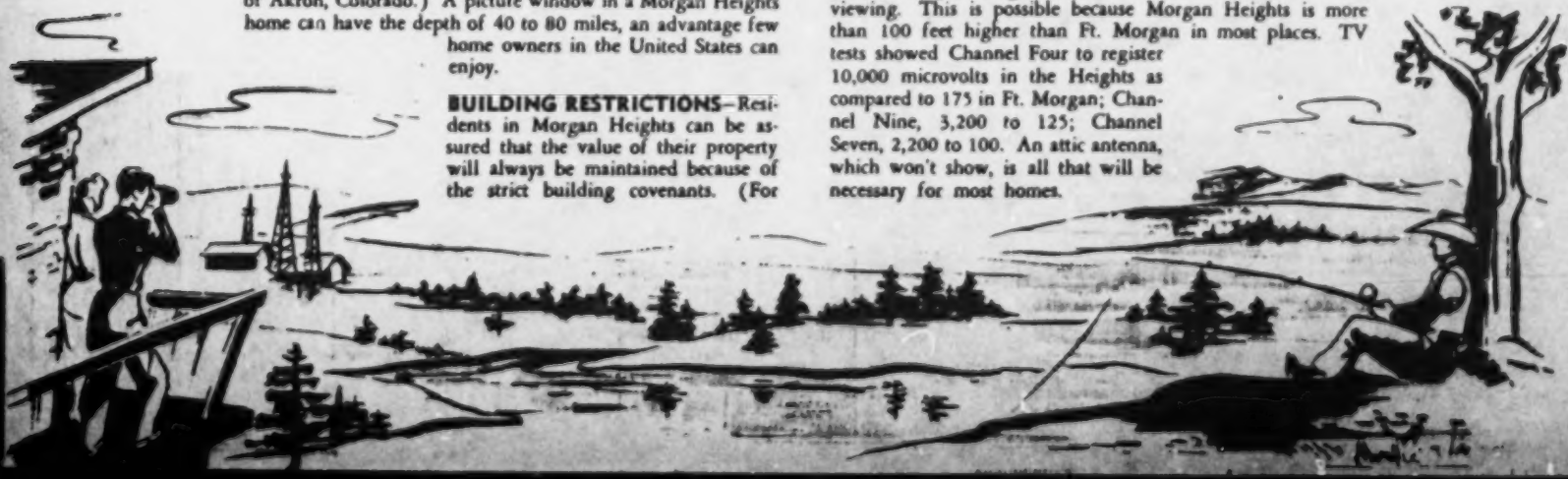
HOW TO GET THERE—Morgan Heights is located approximately three and a half miles northeast of Ft. Morgan, Colorado. In order to get there, go to the intersection of Main Street and Platte Avenue, where the stop lights are located on U.S. 6 and 34 in the center of Ft. Morgan. Turn north and go two miles (you will cross the South Platte River and the Union Pacific tracks); then go west to the Ft. Morgan Country Club; bear on north about a quarter mile to the Morgan Heights sign. AND THERE YOU ARE!

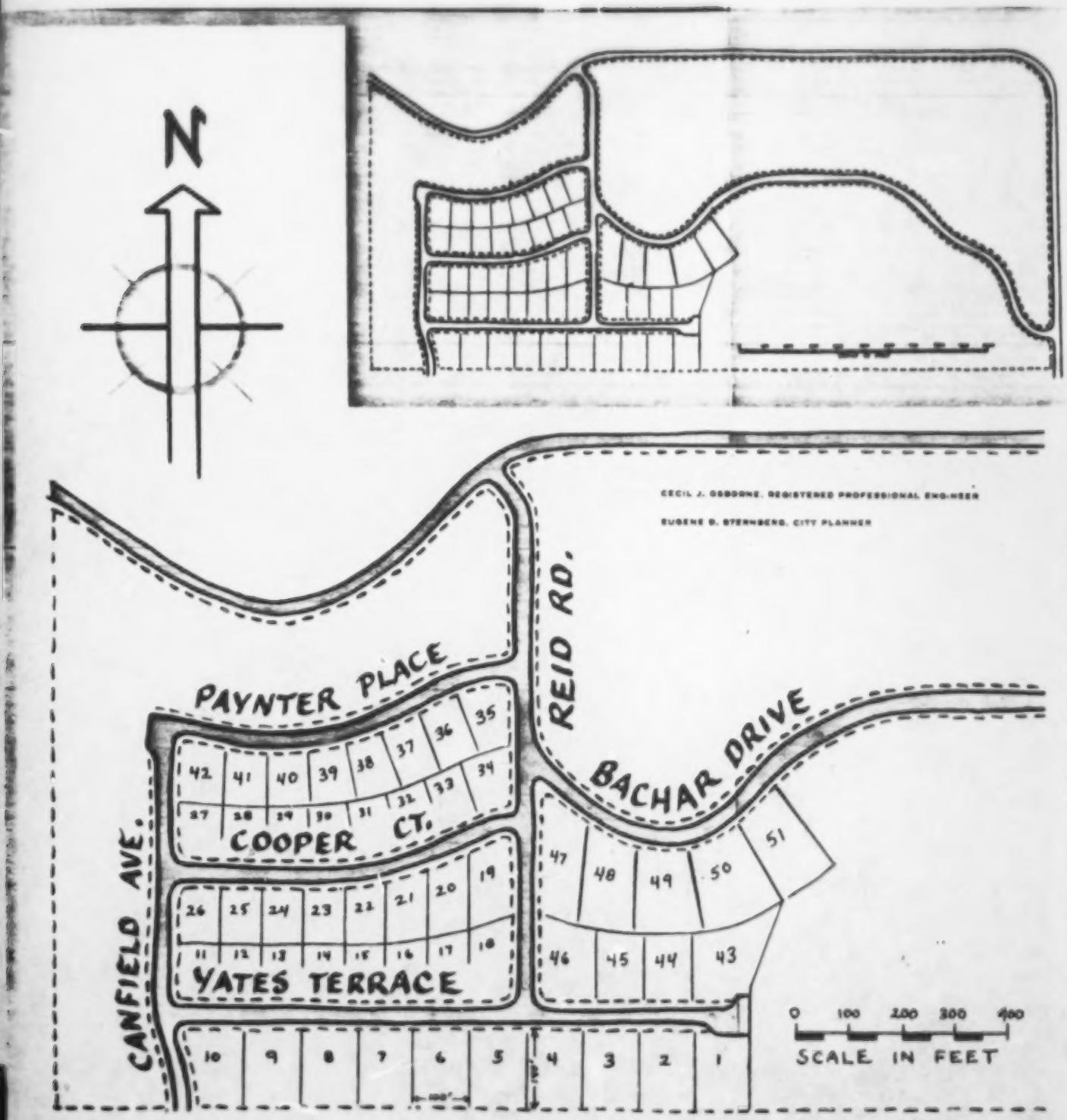
MAGNIFICENT VIEW—Probably the biggest feature of Morgan Heights is the tremendous view you have to the west, south, and east. You can see the mountains to the west on most days; you can see the Adena Field, Colorado's second largest producing oil field, to the south (a terrific sight at night); and Brush and Fremont Buttes to the east. (The Buttes are located several miles west of Akron, Colorado.) A picture window in a Morgan Heights home can have the depth of 40 to 80 miles, an advantage few home owners in the United States can enjoy.

BUILDING RESTRICTIONS—Residents in Morgan Heights can be assured that the value of their property will always be maintained because of the strict building covenants. (For complete building restrictions, see inside.)

RECREATION AREA — Morgan Heights adjoins the Ft. Morgan Country Club on the north, thus golfers will find it convenient for play. No doubt many will enjoy a game before breakfast and before going to work. A little farther to the west is an 80-acre area with many ponds for the enjoyment of residents who prefer fishing, hiking or horseback riding. Picnics can be fun beside one of the colorful ponds under a shaded willow tree. The youngsters can catch perch or blue gill, while dad tries his luck at bass in the north pond. (It's reported that 12-inch bass are plentiful, but difficult to land.) The ponds offer the kids ice skating in winter; the hills, sledding or tobogganing.

TELEVISION RECEPTION—For those who enjoy television, Morgan Heights will offer an extra thrill in video viewing. This is possible because Morgan Heights is more than 100 feet higher than Ft. Morgan in most places. TV tests showed Channel Four to register 10,000 microvolts in the Heights as compared to 175 in Ft. Morgan; Channel Nine, 3,200 to 125; Channel Seven, 2,200 to 100. An attic antenna, which won't show, is all that will be necessary for most homes.

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CECIL J. OSBORNE, REGISTERED PROFESSIONAL ENGINEER
EUGENE D. STERNBERG, CITY PLANNER
PAYNTER PLACE
REID RD.
BACHAR DRIVE
CANFIELD AVE.
COOPER CT.
YATES TERRACE
42 41 40 39 38 37 36 35
27 28 29 30 31 32 33 34
26 25 24 23 22 21 20 19
11 12 13 14 15 16 17 18
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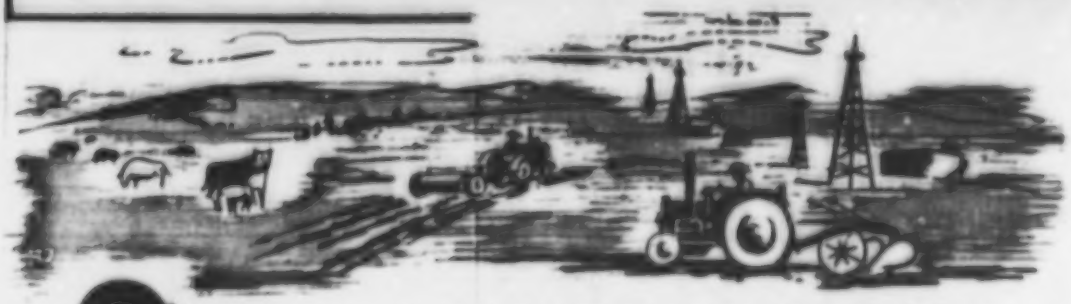
SCALE IN FEET



MAGNIFICENT MORGAN COUNTY

AS SEEN FROM *Morgan Heights*

Morgan Heights—where with the naked eye and a pair of good binoculars, you can see one of the richest valleys in the world—Morgan County, with the South Platte River gliding through the center of it.

You can see sugar beet fields, corn fields, bean fields, and deep to the south you can see wheat fields spotted with the oil rigs and oil wells of Adena — Colorado's second largest producing oil field.

You can see people at work from Morgan Heights—men on tractors cultivating; men in trucks on U.S. Highway 6 and 34, leaving the county by way of Wiggins and Hillrose en route to Denver and Chicago; cowboys working cattle from the saddles of their horses; men and women thinning sugar beets; farmers irrigating their pastures from the many canals which slice through the magnificent county called Morgan.

You can see industry at work, too. Great Western Sugar Company's factory steaming smoke to the wind during campaign; Radio Station KFTM's tower shooting invisible sound waves through the air so that Mary in Goodrich can hear "Home On The Range" dedicated to her by George of Orchard.

You can see the Morgan County REA tower symbolizing better electric service to farmers and ranchers. Distress calls from a farm wife near Gary, who wants to continue ironing her husband's shirt, or the hired man near Snyder, who wants to continue his milking, can be answered in a matter of minutes because of this modern dispatching system.

You can see the Mountain States Telephone and Telegraph Company mobile phone tower to the southeast, which may relay vital petroleum information from an Adena o; Little Beaver oil well site direct to a business tycoon on his yacht off Miami Beach or a movie star speculator on location in Hollywood.

Morgan Heights—where you can see the Union Pacific City of Denver or the Burlington's Denver Zephyr dart east or west like gold and silver toy trains. Freight of both railroads can be seen carrying what might be important and perhaps secret cargoes to either coast for missions in Formosa or Morocco.

As your head turns east, you can see the stand-pipe which serves Brush residents with water. And further east, it's Fremont Buttes, named for General John Charles Fremont, who was supposed to have been trapped there by Indians decades ago. The story goes that he signaled the observation post of Old Fort Morgan by mirror, which inspired a movie-like cavalry rescue.

If you were able to watch long enough, you'd probably see 75% of all the tourists on their way to or from Colorful Colorado on the state's most virile section of highway—U.S. 6 and 34. You can't help wishing that more of these people could enjoy the delightful sight that is Morgan County.

Named for Colonel Christopher A. Morgan, Fort Morgan can be seen resting peacefully in the valley 100 feet below Morgan Heights. Its church steeples mark the many religious faiths found here. Free porch lights, a free swimming pool, and thousands of lovely shade trees are a few of the reasons why people say, "Fort Morgan is a pretty town."

Winding westward on the Weldona road, you can see a bright red sedan with a trailer carrying an outboard motor boat headed toward Jackson Lake for an afternoon of water skiing, surfboarding, fishing, and swimming. They'll be there in about 15 minutes.

Then as you look to the foreground, you can see a duffer hook a golf ball off one of the beautiful fairways of the Ft. Morgan Country Club, or a hot shot sink a twenty-foot putt.

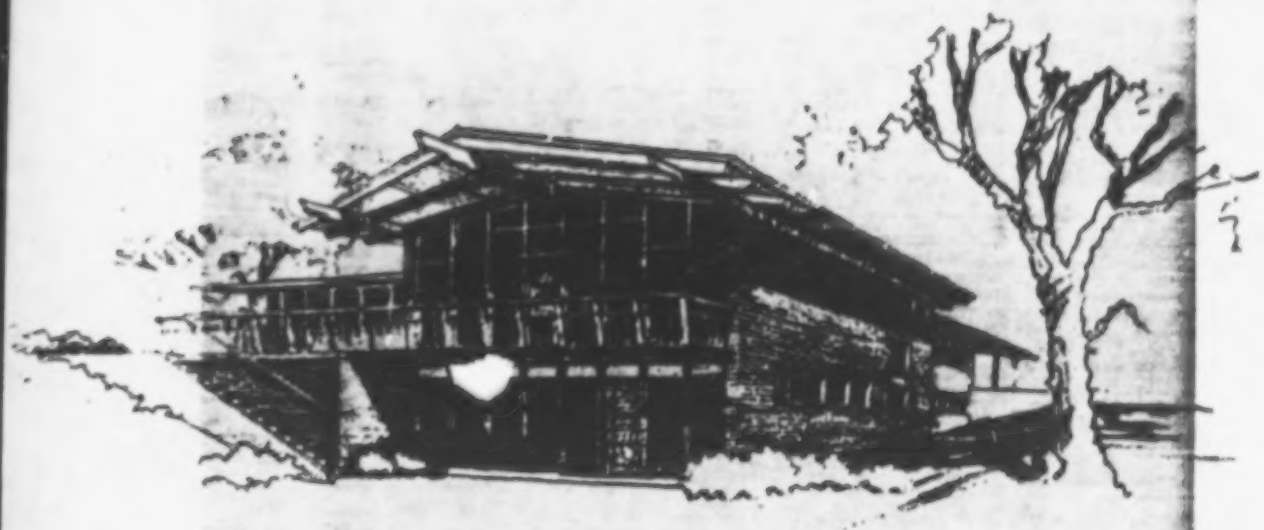
As you span the blue 150-mile horizon, you observe a squadron of mallard ducks circling for a landing, or a flock of geese heading south for the winter. And then far to the west you note that it is getting late and you see the most colorful sunset your eyes could possibly picture—combinations of red, gold, blue, purple, pink streak to the heavens in back of the majestic Rocky Mountains.

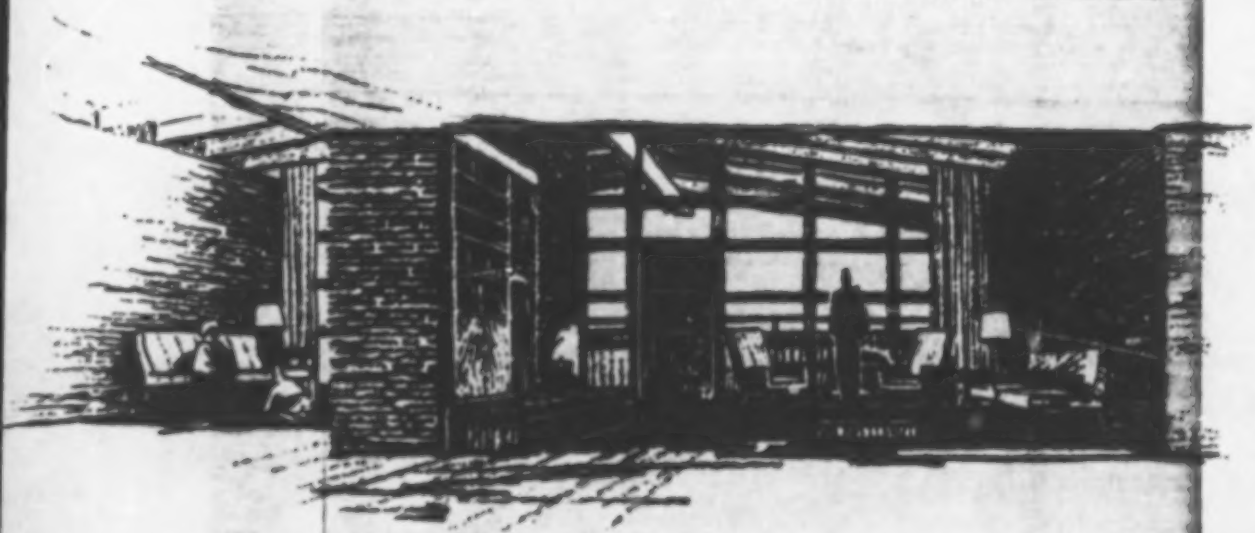
At night to the south, you can see Adena blazing away with its beautiful battery of flame, testifying to the new wealth found 5,000 feet below Morgan's already rich soil. Oil experts say production may last 25 years or more, pumping lubrication for machines of America and the world.

Above your head, you can see the stars practically within reaching distance, while the moon looks down on this tremendous, multi-million-dollar rectangle. Magnificent Morgan County, hub of Northeastern Colorado where opportunity knocks every day, you are a spectacular sight to see!

The FIRST MORGAN HEIGHTS HOME

EUGENE D. STERNBERG • ARCHITECT





QUESTIONS and ANSWERS

Q: Is there a master plan for the future development of Morgan Heights?
A: Yes. Eugene D. Sternberg, Denver architect and city planner, has been retained to assist the owners of Morgan Heights map a sensible and practical program of expansion.

Q: Is a shopping center, school, etc., included in the plans?
A: Yes. As soon as it is justified these plans will be put into effect.

Q: Will there be building restrictions enforced in Morgan Heights?
A: Yes. (See complete set printed elsewhere in this brochure.)

Q: Will builders be required to spend any certain amount of money on a home in Morgan Heights?
A: No. The restrictions do not require any certain price home; this is controlled by the number of square feet. The minimum is 900 square feet exclusive of outside porches and garages.

Q: Is it necessary to employ the services of an architect for a home in Morgan Heights?
A: No. However, prospective home builders might give consideration to the employment of one, as oftentimes an architect can save you money, while giving you more what you desire in a home.

Q: If an architect is employed, is it required to use any particular one?
A: No. However, it is recommended that if you are considering an architect, that you hire one belonging to the American Institute of Architects (A.I.A.).

Q: How much does an architect charge to design a home?
A: This will vary from 1% to 10% of the construction cost of the home, depending upon the architect and the amount of service desired.

Q: Is it necessary to employ any particular contractor in the construction of a home in Morgan Heights?
A: No. In fact, it is not necessary to hire a contractor at all if an individual wants to contract the work himself, and the home meets the building requirements.

Q: Is it required that building materials be purchased from any particular dealer?
A: No.

Q: Where can prospective Morgan Heights home builders get plans which will pass the restrictions?
A: Plans can be obtained from your favorite lumber yard; you can employ an architect of your selection; or you can get plans from practically any home magazine.

Q: Who determines whether or not a home plan is suitable?
A: The Morgan Heights Architectural Control Committee.

Q: Is a [illegible] Morgan Heights?
A: No. So long as the home fits into the general theme of Morgan Heights.

Q: Is there an ample water supply in Morgan Heights?
A: Yes. According to L. L. Canfield, owner of the Canfield Drilling Company of Ft. Morgan, there is ample water for between 20 and 30 homes, perhaps more. In the event Morgan Heights grows beyond this stage, an unlimited supply could be obtained by put-

ON MORGAN HEIGHTS

ting supporting wells near the South Platte River, much like the Ft. Morgan Country Club obtains water for the golf course.

Q: Will home owners have individual wells or will there be a community water system?
A: There is already established a community water system owned and operated by Morgan Heights, Inc., a non-profit corporation, which was organized under the laws of Colorado on January 13, 1955. (The sanitation system is to be operated the same way.)

Q: Is Morgan Heights water soft?
A: No. However, it is softer than Ft. Morgan water, according to a test made by Colorado A. & M. College at Ft. Collins. Ft. Morgan water showed 50 grains hardness; Morgan Heights, 28.6 grains.

Q: Is Morgan Heights water safe for drinking purposes?
A: Yes, as tests made by the Northeast Colorado Health Department will show.

Q: Who are the stockholders of Morgan Heights, Inc.?
A: The owners of land in Morgan Heights. As soon as a person buys a lot or lots in the subdivision, he will be issued voting stock in Morgan Heights, Inc., in proportion to his ownership.

Q: What will the cost for water and sewer service be?
A: It will be prorated to each home owner on the basis of actual cost.

Q: What about assessments for roads and other improvements?
A: This will be included in the price of the property.

Q: How will Morgan Heights be served with electric service?
A: By the Morgan County Rural Electric Association.

Q: Will there be telephone service?
A: Yes.

Q: Where will children living in Morgan Heights go to school?
A: Morgan Heights is in School District No. Three, and children will probably go to Central School in Ft. Morgan. The District Three bus goes right by Morgan Heights now, and youngsters will be picked up and dismissed near their home.

Q: Will there be police protection?
A: Morgan Heights will be protected by the Morgan County Sheriff's Office.

Q: What about fire protection?
A: The Ft. Morgan Rural Fire Department will offer fire protection, as Morgan Heights is within the Ft. Morgan Rural Fire Protection District.

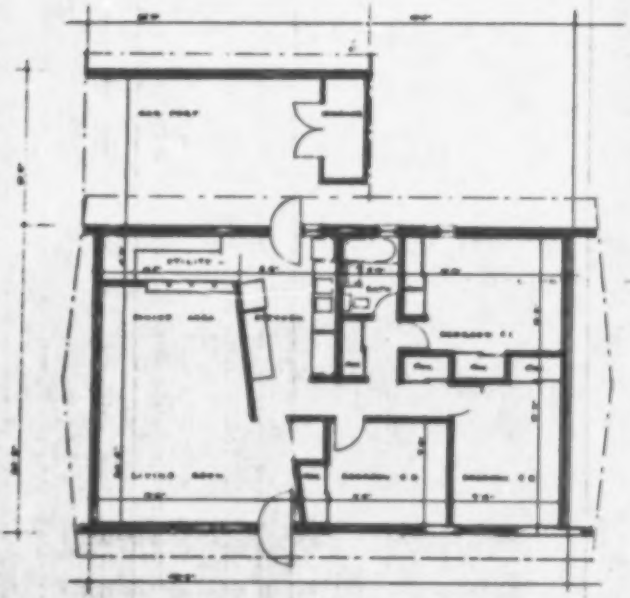
Q: Is it possible to get financing for homes in Morgan Heights?
A: Yes. Mutual Savings & Loan Association of Denver, the Morgan County Federal Savings & Loan Association of Ft. Morgan and Equitable Savings and Loan Association of Brush will consider loans on Morgan Heights homes.

Q: How much of a loan can a person get?
A: In some instances, up to 90% of the total sale price.

Q: Is it planned that Morgan Heights be annexed to Ft. Morgan?
A: No. It is planned to make Morgan Heights a community within itself.

Contemporary House Plans

LIVING ROOM ELEVATION



Inquire about details on this home with regards to construction costs, financing, etc.

Other similar home plans also available.

Contemporary Interiors . . .

Here are two contemporary interiors in a Eugene D. Sternberg designed home located in Denver, Colorado.

These are the type of interiors contemplated in some of the homes in Morgan Heights. Note the open beam ceilings, the natural-wood finishes, the indirect lighting, and the exposed brick walls, which lend a practical and attractive appearance for modern twentieth century living.

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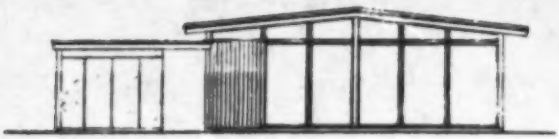

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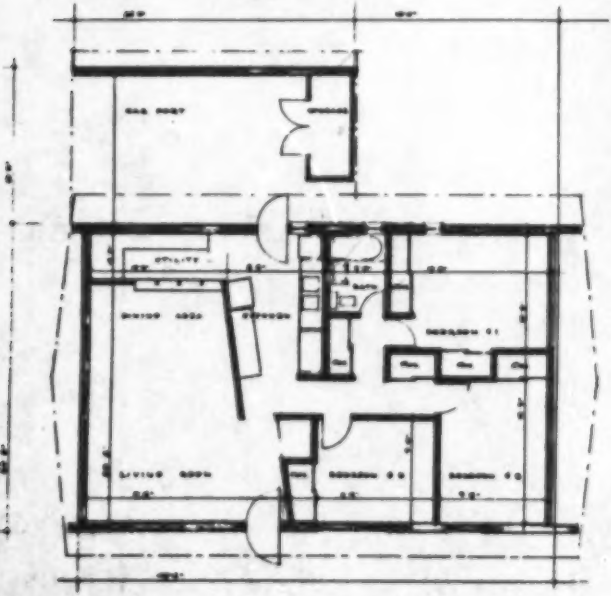

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